

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CARLOS NIETO and ESTELA GIL, )  
 )  
 Plaintiffs, )  
 vs. )  
 )  
 LITTON LOAN SERVICING, )  
 )  
 Defendant. )

Case No.: 2:10-cv-00223-GMN-GWF

**ORDER**

Before the Court is the action filed by Plaintiffs, Carlos Nieto and Estela Gil, who are represented by counsel against Defendant, Litton Loan Servicing. Also before the Court is Defendant Litton Loan Servicing's ("Litton Loan") renewed Motion for Summary Judgment (ECF No. 23). Plaintiffs have not filed any response to the motion, and have not taken any action before the Court since 2010. The last proceeding of record undertaken by Plaintiffs was on March 26, 2010, to oppose Defendant's Motion to Dismiss. (*See* ECF No. 9.) On December 17, 2010, Defendant filed a Joint Status Report on behalf of the parties. (ECF No. 16.)

For the reasons discussed below, the Court will dismiss Plaintiff's Complaint for want of prosecution, and will deny Defendant's Motion for Summary Judgment as moot.

**I. BACKGROUND**

This action was removed to this Court on February 19, 2010. (ECF No. 1.) Defendant filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (ECF No. 7). Plaintiffs filed a Response (ECF No. 9) on March 26, 2010, and on February 23, 2011, the Court granted the motion to dismiss as to the first, third and fifth causes of action, and denied the motion as to the second and fourth causes of action.

Defendant then filed the first Motion for Summary Judgment (ECF No. 20) on June 1,

2011, to which Plaintiffs filed no opposition. On July 5, 2011, the Court entered its Order denying Defendant's first Motion for Summary Judgment (ECF No. 20) without prejudice. (Order, ECF No. 22.) In its Order, the Court explained that "Defendant has failed to show that the June 4, 2009 Notice of Default was properly entered." (*Id.* at 4:16-17.) The Court acknowledged Defendant's argument "that the Notice of Default was filed properly because National Default Servicing Company was at the time acting as the agent of Defendant, which, in turn, was acting as the agent of the beneficiary." (*Id.* at 5:1-4.) The Court noted that "Defendant would have prevailed on this Motion for Summary Judgment if it had adduced evidence that this was actually the case . . . ." (*Id.* at 5:4-5.)

Discovery has never commenced in this action, yet Defendant renewed its motion on October 26, 2011, requesting summary judgment in its favor. (ECF No. 23.) As with the previous motion, Plaintiffs have not responded to the instant motion.

The last action Plaintiffs took in the docket was on March 26, 2010, to oppose Defendant's Motion to Dismiss. (*See* ECF No. 9.) On December 17, 2010, Defendant filed a Joint Status Report on behalf of the parties. (ECF No. 16.)

## **II. DISCUSSION**

The local rules for the District of Nevada provide for dismissal of an action for want of prosecution:

All civil actions that have been pending in this Court for more than two hundred seventy (270) days without any proceeding of record having been taken may, after notice, be dismissed for want of prosecution on motion of counsel or by the Court.

D. Nev. R. 41-1; *see also* Fed. R. Civ. P. 41(b). Because Plaintiffs have not undertaken any proceeding of record since 2010, and Plaintiffs have also failed to oppose both of Defendant's motions for summary judgment (*See* ECF Nos. 20, 23), the Court issued an Order to Show Cause (ECF No. 25) as to why this action should not be dismissed for want of prosecution.

1 On June 4, 2012, Defendant filed a Notice of Plaintiffs' Failure to Respond (ECF No.  
2 26), and requested that the Court issue an order dismissing Plaintiffs' case for want of  
3 prosecution under Local Rule 41-1, and also under Federal Rule of Civil Procedure 41(b).

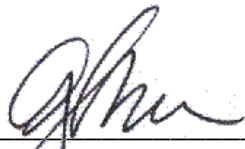
4 As discussed above, Plaintiffs have not taken any action in the docket since 2010.  
5 Plaintiffs have also failed to oppose both of Defendant's motions for summary judgment. The  
6 Court therefore finds that dismissal is appropriate.

7 **III. CONCLUSION**

8 **IT IS HEREBY ORDERED** that Plaintiff's Complaint is **DISMISSED for want of**  
9 **prosecution.** The Clerk shall enter judgment accordingly.

10 **IT IS FURTHER ORDERED** that the Motion for Summary Judgment (ECF No. 23) is  
11 **DENIED as moot.**

12 **DATED** this 14th day of June, 2012.

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Gloria M. Navarro  
United States District Judge